

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 135 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Noos. 1 & 3 to 5 No. No.2 Yes.

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PREMSING @ PALLU JESING RAJPUT

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR AB VYAS, ASSISTANT GOVT.PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order dated 16.6.1998 passed by the Commissioner of Police, Surat City under section 3(2) of the prevention of Antisocial Activities Act, 1985 (for short 'PASA') and has prayed that the said order be quashed and he be released from illegal detention.

From the grounds of detention, Annexure "B" it seems that the Detaining Authority declared the

petitioner to be dangerous person on the basis of five registered offences, four under section 379 IPC and the fifth under sections 392, 387 and 117 IPC as well as from the statements of two confidential witnesses. It was further found that the activities of the petitioner were prejudicial for maintenance of public order. Lesser alternative remedies other than preventive detention were also considered by the Detaining Authority who found that except preventive detention other remedies were inefficacious. Accordingly, the impugned order was passed.

Impugned order has been challenged mainly on four grounds.

One of the grounds of challenge is that the detention order as computed from registration of last offence was passed after considerable delay. Hence, it has been rendered illegal and invalid. In support of this contention reliance has been placed upon the case of Pradeep Nilkanth Paturkar Vs. Ramamurthi and others, AIR 1994 SC pg.656. The facts of this case were that the detention order was passed on the basis of statements of witnesses as well as on the basis of registered cases against the detenu after five months and eight days from registration of last case and more than four months from submission of proposal. This case is apparently distinguishable on facts from the case under consideration. The grounds of detention show that the last offence against the petitioner was registered on 22.7.1997. The detention order was passed on 16.6.1998. However, two confidential witnesses gave statements disclosing incidents which took place on 7.4.1998 and 15.5.1998 respectively. It is, therefore, difficult to compute the delay only from the date of registration of last offence. The delay has to be computed from the date of commission of last offence and last offence was committed by the petitioner on 15.5.1998. Though it was unregistered offence, on the face value of the statements of the witness narrating incident dated 15.5.1998 it cannot be said to be false. After this incident dated 15.5.1998 some time must have been taken by the sponsoring authority to collect material and prepare report. The report was submitted to the Detaining Authority who after examining the same passed the impugned order on 16.6.1998 and hence period of 30 days intervened and this cannot be said to be inordinate delay. The delay in the case of Pradeep Nilkanth (Supra) was five months and eight days from the registration of the last case and four months from submission of proposal. These two dates do not fit in the facts of the

case before me. Hence, the impugned order of detention is not rendered invalid on account of delay in its passing.

The next contention has been that in the grounds of detention, the Detaining Authority observed that the petitioner committed offences punishable under chapters XVI & XVII of the IPC, whereas the petitioner committed offence punishable under Chapter XVII only and this indicates non application of mind by the Detaining Authority. This ground also cannot be accepted. In the opening portion of the grounds of detention, the Detaining Authority in para 2 has mentioned that the petitioner committed offences punishable under Chapter XVII of the IPC between years 1996 to 1998. If at page 8 of the translation of grounds of detention mention was made regarding commission of offences under chapters XVI & XVII IPC, it does not mean that it was a case of non application of mind. If the statement of second confidential witness, who narrated the incident dated 15.5.1998, is scrutinised it indicates that the offence committed by the petitioner on that date was capable of division in two parts. The first was in relation to the witness and the second was in relation to members of public who were injured by the petitioner. Thus, causing injuries to the members of the public gives indication that offence punishable under Chapter XVI IPC was also committed by the petitioner. In view of this matter, it cannot be said that the Detaining Authority did not apply its mind to the provisions of chapters XVI & XVII of IPC.

Similar is the statement of first confidential witness who stated that the members of the public were also injured by the petitioner. Thus on this ground also the impugned order cannot be said to have become invalid.

The next ground has been that the activities of the petitioner do not amount to activities prejudicial for maintenance of public order, hence, the impugned order is rendered invalid. In the same continuation it was argued that the activities of the petitioner were confined to one individual viz. to the two witnesses on two occasions and no member of public was affected, hence, the public order cannot be said to have been disturbed.

The Apex Court's verdict in Mustakmiya Jabbarmiya Shaikh Vs. Commissioner of Police 1995(2) GLR Pg.1268 was referred.

The Detaining Authority from the material on

record came to the conclusion that the petitioner is dangerous person within the meaning of section 2(c) of the PASA. This declaration does not require any interference because five offences were registered against the petitioner, four under section 379 IPC and one under sections 392, 387 and 117 of the IPC. The repetition of offences punishable under Chapter XVII of IPC was thus indicated clearly from these five registered cases. In addition to this, the two confidential witnesses also narrated about commission of offences by the petitioner punishable under Chapters XVI & XVII of the IPC. In this view of the matter, the petitioner was rightly declared as dangerous person.

Coming to the activities of the petitioner, five registered cases cannot be said to have created situation prejudicial for maintenance of public order. The brief account of the offences committed on five occasions has been given in the grounds of detention and from this disclosure it cannot be said that the petitioner's activities were prejudicial for maintenance of public order.

Now remains the statements of two confidential witnesses.

The first witness stated about the incident dated 7.4.1998 at 3.30 p.m. The petitioner in the company of his three companions was standing and on seeing the witness going on vehicle stopped him. The witness was abused and was beaten on the suspicion that he was police informer. He was questioned why he was passing information about the activities of the petitioner to the police. The witness replied that he had no connection with the police and he does not know any member of the police and he is not passing any information. Feeling dissatisfied the petitioner became excited, dragged the witness from his vehicle and threw him on the road and again beat him by kicks and fists. The witness shouted for help. Persons passing in vehicle and nearby people collected at the spot and tried to intervene. The petitioner gave signal whereupon his companions attacked the members of the public with sword, knife and razor. Lorry-galla holders on account of fear went inside their houses and closed the doors of the houses. Vehicle owners left the place and traffic was disturbed and atmosphere of fear was created. The witness apologised whereupon money kept by the witness was taken away by the petitioner. The witness was threatened that in case he would lodge report with the police he as well as his rickshaw will be set on fire. Due to fear of the

petitioner the witness did not lodge any complaint.

The second incident occurred on 15.5.1998 at 7.00 p.m., where again the petitioner in the company of his associates stopped the witness seated in rickshaw and asked him to give money for entertainment. The witness refused, whereupon he was dragged and thrown on the road and was beaten by kicks and fists. The witness shouted for help, whereupon nearby people lorry galla holders and other people collected at the spot. They tried to intervene, whereupon, on the signal of the petitioner his companions assaulted the members of the crowd with sword, knife etc. and atmosphere of fear was created due to which they started running for safety towards their houses and closed the doors, windows of their houses and lorry gallas were also closed. The vehicle holders under fear ran for safety and left the scene of occurrence. The witness apologized. He was released by the petitioner only after extracting money from him. The petitioner again threatened the witness that in case the police is informed he will be finished meaning thereby he would be killed.

It is to be seen whether on these facts, it can be said that the verdict of the Apex Court in M.J.Shaikh's case (Supra) can safely be applied. The Apex Court has in this case discussed the distinctions between law and order and public order and has also held as to how a dangerous person can be preventively detained. The Supreme Court proceeded to observe that a dangerous person can be preventively detained only when his activities are found prejudicial for maintenance of public order. The registered offence and narration of incidents by the four witnesses was considered by the Apex Court. The registered offence in the opinion of the Apex Court was a stale incident which could not be the basis for an order for preventive detention. The statements of four confidential witnesses were also scrutinised by the Apex Court. The statements of two witnesses were found to be insufficient for passing the detention order. The third incident was also considered to be insufficient for passing the order of preventive detention. In the third incident, the petitioner was alleged to have purchased some goods worth Rs.500/- from the witness a businessman and on demand of price of goods the petitioner was alleged to have dragged and beaten the businessman on public road and pointed his revolver towards the people who gathered there. In the fourth incident the detenu stopped the witness on the suspicion that he was police informer and passing on information to the police that the petitioner was indulging in

antisocial activities. It was also alleged that the petitioner rushed towards people who gathered there showing and pointing out revolver. The cumulative effect of these two incidents was considered by the Apex Court to be incidents between two individuals in which public at large was not affected. It is thus clear from these two incidents that public at large was not affected. Simply showing revolver to the members of the public cannot be said to be such activity which created situation prejudicial for maintenance of public order. The distinction between public order and law and order is quite settled. When the legislature while enacting PASA has given extended meaning to the word 'public order' it has to be understood in that context. The wisdom of the legislature is not restricted to situation prejudicial for maintenance of public order but also extends to deeming situation which is prejudicial for maintenance of public order. Hence the extended meaning of public order is also to be taken note of. Section 3 and section 4 of the PASA make such provision. Section 3(1) of the PASA provides that the State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. Activities in any manner prejudicial for maintenance of public order have to be understood in the way the legislature has defined the same under section 3(4) of PASA and also in view of extended meaning of disturbance of public order as contained in explanation to sub-section (4) of section 3 of PASA. The explanation to sub-section (4) of section 3 provides that for the purposes of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. It is, therefore, clear from this explanation that if the activity which is directly or indirectly causing or is likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health detention order will be justified.

Examining the statements of two confidential witnesses in the light of explanation to sub-section (4) of section 3 of PASA, it is clear that it was not an incident confined between the petitioner and two

witnesses on two dates. Ofcourse the witnesses were involved initially, but on their alarm when members of the public from vicinity collected and also persons passing on vehicles collected and attempted to intervene and save the witnesses they too were not spared and were beaten and injured with sword, knife and razor etc. on both the occasions, threat was given to the witnesses not to approach the police otherwise in one case the witness along with rickshaw would be set on fire and in the other case the witness would be killed. These two incidents therefore, created situation prejudicial for maintenance of public order in as much as a section of the public was affected and fear and alarm was created in their mind and they received injuries as well. The activities in any manner prejudicial for maintenance of public order have to be understood in the way the legislature has defined the same under section 3 (4) of PASA and also in view of extended meaning of disturbance of public order as given by the legislature in explanation to sub-section (4) of section 3 of PASA. Viewed in this angle the activities of the petitioner can certainly be said to be prejudicial for maintenance of public order.

In these circumstances, the impugned order of detention does not require any interference. The writ petition, therefore, fails and is hereby dismissed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt